MONTANA LEGISLATIVE HISTORY

Chapter 255 19 92

Bill H _____ S 32 Original bill & history ✓C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Mar 06	✓C	Hearing Date(s)	Jan 09	✓C
		C		Jan 17	✓C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

2/06	TRANSMITTED TO GOVERNOR		
2/07	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 11		
	EFFECTIVE DATE: 02/07/97		

SB 31 INTRODUCED BY JENKINS *LC0307 DRAFTER: MACMASTER*

PROVIDE FOR CHEMICAL TREATMENT OF CERTAIN SEX OFFENDERS

12/19	INTRODUCED		
12/30	FISCAL NOTE REQUESTED		
1/03	REFERRED TO JUDICIARY		
1/06	FIRST READING		
1/13	HEARING		
1/13	FISCAL NOTE RECEIVED		
1/14	FISCAL NOTE PRINTED		
1/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/25	REREFERRED TO JUDICIARY		
1/28	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/30	2ND READING PASSED	37	11
1/31	3RD READING PASSED	37	12
	TRANSMITTED TO HOUSE		
2/01	FIRST READING		
2/01	REFERRED TO JUDICIARY		
3/06	HEARING		
3/11	COMMITTEE REPORT—BILL CONCURRED		
3/14	2ND READING CONCURRED	89	10
3/15	3RD READING CONCURRED	85	13
	RETURNED TO SENATE		
3/20	SIGNED BY PRESIDENT		
3/20	SIGNED BY SPEAKER		
3/21	TRANSMITTED TO GOVERNOR		
3/31	RETURNED TO SENATE WITH GOVERNOR'S PROPOSED AMENDMENTS		
4/03	REVISED FISCAL NOTE REQUESTED		
4/03	REVISED FISCAL NOTE RECEIVED		
4/07	2ND READING GOVERNOR'S PROPOSED AMENDMENTS NOT CONCURRED	34	15
4/07	REVISED FISCAL NOTE PRINTED		
	HOUSE		
4/08	2ND READING GOVERNOR'S PROPOSED AMENDMENTS NOT CONCURRED	91	9
4/09	TRANSMITTED TO GOVERNOR FOR RECONSIDERATION		
4/18	VETOED		
4/19	VETO OVERRIDDEN BY SENATE	35	15
4/19	VETO OVERRIDDEN BY HOUSE	78	16
	CHAPTER NUMBER 334		
	EFFECTIVE DATE: 10/01/97		

SB 32 INTRODUCED BY HALLIGAN *LC0367 DRAFTER: STERNBERG*

ALLOW A PARTY, AS A PART OF A MOTION FOR TEMPORARY MAINTENANCE OR SUPPORT OR BY INDEPENDENT MOTION, TO REQUEST A TEMPORARY RESTRAINING ORDER PROVIDING THAT INSURANCE COVERAGE NOT BE MODIFIED

12/19	INTRODUCED
12/30	FISCAL NOTE REQUESTED
1/03	REFERRED TO JUDICIARY
1/06	FIRST READING
1/09	HEARING
1/09	FISCAL NOTE RECEIVED

1/10	FISCAL NOTE PRINTED		
1/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/23	2ND READING PASSED	49	0
1/24	3RD READING PASSED	48	0
	TRANSMITTED TO HOUSE		
1/25	FIRST READING		
1/25	REFERRED TO JUDICIARY		
3/06	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED		
4/03	2ND READING CONCURRED	92	8
4/04	3RD READING CONCURRED	82	17
	RETURNED TO SENATE		
4/08	SIGNED BY PRESIDENT		
4/08	SIGNED BY SPEAKER		
4/09	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 255		
	EFFECTIVE DATE: 10/01/97		

SB 33 INTRODUCED BY HALLIGAN *LC0368 DRAFTER: STERNBERG*

ALLOW THE ISSUANCE OF A TEMPORARY FAMILY SUPPORT ORDER TO ENSURE THE PAYMENT OF PERIODIC MARITAL ESTATE LIABILITIES OUT OF THE PARTIES' INCOME OR MARITAL ASSETS DURING THE PENDENCY OF MARRIAGE DISSOLUTION PROCEEDINGS

12/19	INTRODUCED		
12/30	FISCAL NOTE REQUESTED		
1/03	REFERRED TO JUDICIARY		
1/06	FIRST READING		
1/09	HEARING		
1/09	FISCAL NOTE RECEIVED		
1/11	FISCAL NOTE PRINTED		
1/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/17	2ND READING PASSED	48	0
1/18	3RD READING PASSED	41	0
	TRANSMITTED TO HOUSE		
1/20	FIRST READING		
1/20	REFERRED TO JUDICIARY		
3/06	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED		
4/03	2ND READING CONCURRED	72	26
4/04	3RD READING CONCURRED	77	22
	RETURNED TO SENATE		
4/08	SIGNED BY PRESIDENT		
4/08	SIGNED BY SPEAKER		
4/09	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 256		
	EFFECTIVE DATE: 10/01/97		

SB 34 INTRODUCED BY NELSON *LC0370 DRAFTER: CAMPBELL*

REQUIRE INSURANCE COVERAGE FOR A MINIMUM HOSPITAL STAY FOLLOWING CHILDBIRTH

BY REQUEST OF STATE AUDITOR

12/19	INTRODUCED
12/30	FISCAL NOTE REQUESTED
1/03	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY
1/06	FIRST READING

SENATE BILL NO. 32

INTRODUCED BY HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A PARTY, AS A PART OF A MOTION FOR TEMPORARY MAINTENANCE OR SUPPORT OR BY INDEPENDENT MOTION, TO REQUEST A TEMPORARY RESTRAINING ORDER PROVIDING THAT INSURANCE COVERAGE NOT BE MODIFIED; REQUIRING THAT A SUMMONS ISSUED IN A MARRIAGE DISSOLUTION, MAINTENANCE, CHILD CUSTODY, CHILD SUPPORT, OR FAMILY LAW MEDIATION ACTION CONTAIN A TEMPORARY RESTRAINING ORDER PREVENTING A PARTY FROM DISPOSING OF MARITAL PROPERTY WITHOUT A COURT ORDER OR THE CONSENT OF THE OTHER PARTY, EXCEPT IN THE USUAL COURSE OF BUSINESS, FOR NECESSITIES OF LIFE, OR FOR THE PAYMENT OF ATTORNEY FEES; SETTING OUT THE TERMS OF THE TEMPORARY RESTRAINING ORDER; AND AMENDING SECTION 40-4-121, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-4-121, MCA, is amended to read:

"**40-4-121. Temporary order** for maintenance or support, ~~or~~ **temporary injunction**, or temporary restraining order. (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion must be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining ~~any~~ a person from transferring, encumbering, concealing, or otherwise disposing of any property, except in the usual course of business or for the necessities of life, and, if so restrained, requiring the person to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) restraining both parties from cashing, borrowing against, canceling, transferring, disposing of,

or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability coverage held for the benefit of a party or a child of a party for whom support may be ordered;

(c) enjoining a party from molesting or disturbing the peace of the other party or of any family member or from stalking, as defined in 45-5-220;

~~(c)~~(d) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

~~(d)~~(e) enjoining a party from removing a child from the jurisdiction of the court;

~~(e)~~(f) ordering a party to complete counseling, including alcohol or chemical dependency counseling or treatment;

~~(f)~~(g) providing other injunctive relief proper in the circumstances; and

~~(g)~~(h) providing additional relief available under Title 40, chapter 15.

(3) In addition to the contents required by the Montana Rules of Civil Procedure, any summons issued pursuant to this chapter must contain a temporary restraining order:

(a) restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether jointly or separately held, without either the consent of the other party or an order of the court, except in the usual course of business or for the necessities of life. The restraining order must require each party to notify the other party of any proposed extraordinary expenditures at least 5 business days before incurring the expenditures and to account to the court for all extraordinary expenditures made after service of the summons. However, the restraining may not order preclude either party from using any property to pay reasonable attorney fees in order to retain counsel in the proceeding.

(b) restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability coverage held for the benefit of a party or a child of a party for whom support may be ordered. However, nothing in this subsection (3) adversely affects the rights, title, or interest of a purchaser, encumbrancer, or lessee for value if the purchaser, encumbrancer, or lessee does not have actual knowledge of the restraining order.

(4) A person may seek the relief provided for in subsection (2) without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition requesting relief under Title 27, chapter 19, part 3. Any temporary injunction entered under this subsection must be for a fixed period

of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, as appropriate.

~~(4)~~(5) The court may issue a temporary restraining order for a period not to exceed 20 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if ~~no~~ an order is not issued until the time for responding has elapsed.

~~(5)~~(6) A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

~~(6)~~(7) At the time of the hearing, the court shall determine whether good cause exists for the injunction to continue for 1 year.

~~(7)~~(8) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

~~(8)~~(9) A temporary order or injunction, entered pursuant to Title 40, chapter 15, or this section:

(a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208;

(b) terminates upon order of the court or when the petition is voluntarily dismissed; and

(c) when issued under this section, must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-220 or 45-5-626."

~~(9)~~(10) When the petitioner has fled the parties' residence, notice of the petitioner's new residence must be withheld except by order of the court for good cause shown."

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0032, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act allowing a party, as a part of a motion for temporary maintenance or support or by independent motion, to request a temporary restraining order providing that insurance coverage not be modified; requiring that a summons issued in a marriage dissolution, maintenance, child custody, child support, or family law mediation action contain a temporary restraining order preventing a party from disposing of marital property without a court order or the consent of the other party, except in the usual course of business, for necessities of life, or for the payment of attorney fees; setting out the terms of the temporary restraining order.

ASSUMPTIONS:
1. There is no fiscal impact on the Departments of Justice or Public Health and Human Services or on the Judiciary.

FISCAL IMPACT:
There is no fiscal impact to the state.

Dave Lewis 1-7-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

1-9-97
MIKE HALLIGAN, PRIMARY SPONSOR DATE

Fiscal Note for SB0032, as introduced

SB 32

SENATE JUDICIARY

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
SB0006	12/27	1/07		PASS AS AMENDED VOTE:10-0	1-15	1/16
SB0016	HALLIGAN, MIKE 12/27	1/08	MANDATORY DISCLOSURE OF ASSETS & LIABILITIES IN DISSOLUTION/SEPARATION	DO PASS VOTE:9-1	1-15	1/16
SB0031	JENKINS, LOREN 1/03	1/13	PROVIDE FOR CHEMICAL TREATMENT OF CERTAIN SEX OFFENDERS	PASS AS AMENDED VOTE:10-0	JUDICIARY 1-22&27	1/22
SB0031	JENKINS, LOREN 1/25		PROVIDE FOR CHEMICAL TREATMENT OF CERTAIN SEX OFFENDERS	PASS AS AMENDED VOTE:7-3	1-27	1/28
SB0032	HALLIGAN, MIKE 1/03	1/09	TEMPORARY PROPERTY RESTRAINING ORDER IN DIVORCE PROCEEDINGS	PASS AS AMENDED VOTE:10-0	1-17	1/21
SB0033	HALLIGAN, MIKE 1/03	1/09	TEMPORARY FAMILY SUPPORT ORDER IN DIVORCE PROCEEDINGS	PASS AS AMENDED VOTE:10-0	1-15	1/16
SB0036	LYNCH, J. D. 1/03	1/09	CODE COMMISSIONER BILL	PASS AS AMENDED VOTE: 10-0	1-14	1/15
SB0044	HOLDEN, RIC 1/09	1/15	LIMIT MOTOR VEHICLE LIABILITY INSURER'S LIABILITY UNDER THE POLICY	DO PASS VOTE:6-3	1-17	1/21
SB0046	SPRAGUE, MIKE 1/09	1/16	CONFISCATION OF DRIVER'S LICENSE OF YOUTH WHO'S DELINQUENT/NEEDS SUPERVISION	PASS AS AMENDED VOTE:10-0	1-17	1/21
SB0048	SPRAGUE, MIKE 1/03	1/10	GENERALLY REVISE YOUTH COURT ACT; YOUTH IN NEED OF INTERVENTION; ASSESSMENTS	PASS AS AMENDED VOTE:9-1	1-29	1/30
SB0048	SPRAGUE, MIKE 3/18	3/25	GENERALLY REVISE YOUTH COURT ACT; YOUTH IN NEED OF INTERVENTION; ASSESSMENTS	COM RPT - _____ VOTE:10-1	3-25	3/25
SB0054	SHEA, DEBBIE 1/03	1/13	REVISE VICTIMS' COMPENSATION LAWS	PASS AS AMENDED VOTE: 10-0	1-16	1/17
	CHRISTIAENS, CHRIS		STATE AUDITOR REGULATION OF THE SALE OF LIVING TRUSTS			

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE CRIPPEN**, on January 9, 1997, at 10:00 A.M., in the Senate Judiciary Room

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 32 - January 6
SB 33 - January 6
SB 36 - January 6

Executive Action: None

HEARING ON SB 32

Sponsor: **SENATOR MIKE HALLIGAN, SD 34, Missoula**

Proponents: **--P. Mars Scott, State Bar of Montana, Domestic Relations Study Commission**
--Mary "Marty" Phippen, Montana Association of Clerks of District Court

Opponents: **None**

Opening Statement by Sponsor:

SENATOR MIKE HALLIGAN, SD 34, Missoula, introduced SB 32. He commented that a package of bills was being introduced to address stability in family law. The purpose of this bill is to make sure assets are not disposed of without the other party's consent to that action. This does not prevent the sale of property, it simply makes sure there is the consent of both parties. After a temporary motion for maintenance or support is filed, it often becomes necessary for another independent motion requesting a temporary restraining order. This bill would provide for a standard procedure, which would be signed by the clerk of court, for a temporary restraining order.

Proponents' Testimony:

{Tape: 1; Side: a; Approx. Time Count: 2.4; Comments: .}

P. Mars Scott, State Bar of Montana, Domestic Relations Study Commission, spoke in favor of SB 32. Under section 40-4-121, there is a provision for any party to get a temporary restraining order to restrain transferring of property. In seventeen years of practice, he has not seen one of those motions denied by a district court judge. There is a cost to the public to get the restraining order. Preparing the motion, brief, etc., costs approximately $150 to $300 per side every time a restraining order is obtained. Also, both sides need to be in court. Because it is a foregone conclusion that the restraining order will be issued, the Commission thought it would be a good idea to make this an automatic procedure. In a recent case, one party decided to sell a $2,000 horse to a friend for $300. If there had been an automatic restraining order in place, the party selling the horse would have had to make application to the court. The attorney had to get an affidavit from his client, file the motion, file the brief, go to court, etc. The cost of this action was $342. His client was given the restraining order. An automatic restraining order would have taken care of this problem.

The last legislature passed a law stating that both parties need to make independent applications to the court for automatic restraining orders. Judges will not now grant mutual restraining orders. The cost has doubled.

Another example of the need for this bill is a case wherein the other side went to the joint bank account, withdrew $50,000 and by 10:00 a.m. that morning had a restraining order put on the other party not to move the marital property. The other side had $50,000 at their disposal. He filed his motions and received a restraining order. An automatic restraining order would address this problem as well.

This bill specifically addresses the issue of insurance. Clients feel that health insurance and life insurance policies are not property. People will take someone off of their insurance

policy as soon as they file for divorce. There is tremendous exposure at this point to the marital estate. Another section of law states that in medical cases both parties are liable for the medical expenses of the other party, whether the other party consented to the expenses being incurred or not. They are considered necessities of life. There is no reason for insurance policies to be changed during the pendency of the action. This is a judge's decision.

Opponents' Testimony: None.

Informational Testimony:

{Tape: 1; Side: a; Approx. Time Count: 11.6; Comments: .}

Mary "Marty" Phippen, Montana Association of Clerks of District Court, questioned the administration of SB 32, particularly page 2, lines 12 and 13. Clerks of the district court have the statutory authority to sign summons but do not have the authority to sign temporary restraining orders. There should be specific language incorporated into the statute stating that the clerk of the district court shall issue the summons containing the temporary restraining order in order to give them the statutory authority to do so. **(EXHIBIT 1)**

Questions From Committee Members and Responses:

SENATOR SHARON ESTRADA had a concern with page 2, line 1, of the bill which dealt with changing the beneficiary. She felt that people should be able to change the beneficiary of their will, estate, or insurance policy at anytime.

Mr. Scott replied that this bill was not designed to prevent someone from being able to develop a will or an estate plan within the context of going through a dissolution action. Anyone should have a right to make a will at anytime to distribute their property. It is, however, important to maintain the status quo of all assets and liabilities once a dissolution action is started. Nothing in this bill prevents someone from asking the other side to change the beneficiary. The control should rest with the district court and not the parties.

SENATOR AL BISHOP felt the restraining order would be an encumbrance on real property.

Mr. Scott felt it would not be an encumbrance which would show up on the record. The divorce action would show on the record. It would not show up on a title report. It would restrict a party's ability to sign a deed because the property was solely in his\her name. If this became law, title companies may start placing this information on the title report.

SENATOR BISHOP stated that this restraining order would be filed in a court of record, since it would be filed in district

court. The title company would be charged with knowledge of that action. In the case of a developer selling lots, with this encumbrance, no purchaser would be safe in buying a lot unless they had a release of the restraining order as it pertained to the property.

Mr. Scott replied the last paragraph of the bill allows a bona fide purchaser in interest to be protected in a case where they in good faith purchased the property.

CHAIRMAN CRIPPEN asked what constitutes actual knowledge.

Mr. Scott commented that actual knowledge would be other than constructive knowledge. Constructive knowledge means that you should have known or should have gone to the title company with the matter. Actual knowledge would mean that you would know that this person should not be transferring the deed or property to you.

SENATOR BARTLETT, referring to page 2, line 30, commented that the current law provides that a person seeking relief under subsection (2), without filing a petition for dissolution or separation, may request relief under Title 27, chapter 19, part 3. She asked for an explanation of the interaction of the amendments which Mr. Scott was proposing to the existing law.

Mr. Scott commented they have not changed the law. They are only jump starting the system. There is no problem getting a restraining order. They are simply trying to expedite the process.

SENATOR BARTLETT asked if this provides for an exception in the usual course of business or for the necessities of life and whether there is a common understanding of what necessities of life would constitute?

Mr. Scott replied that the language in this bill is current law and to date that has not been a problem.

Closing by Sponsor: **SENATOR HALLIGAN** closed on SB32.

HEARING ON SB 33

Sponsor: **SENATOR MIKE HALLIGAN, SD 34, Missoula**

Proponents: **--P. Mars Scott, State Bar of Montana, Domestic Relations Study Commission**
--Mary Ann Wellbank, Administrator of the Child Support Enforcement Division (CSED)

Opponents: **None**

Opening Statement by Sponsor: **SENATOR HALLIGAN** introduced SB 33. This bill is another part of the package. When a dissolution action is started the bills do not stop. This bill attempts to

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE Jan 9, 1997

NAME	PRESENT	ABSENT	EXCUSED
SUE BARTLETT	✓		
AL BISHOP	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
WALT MC NUTT	✓		
LORENTS GROSFIELD, VICE CHAIRMAN	✓		
BRUCE CRIPPEN, CHAIRMAN	✓		

SEN:1995
wp.rollcall.man
CS-09

NAME Mary "Marty" Phippen

ADDRESS 617 No. Raleigh, Helena 59601

HOME PHONE 449-4113 WORK PHONE _____

REPRESENTING Montana Association of Clerks of District Courts

APPEARING ON WHICH PROPOSAL? SB 32

DO YOU: SUPPORT _____ OPPOSE _____ AMEND ✓

COMMENTS:

Amend Language, Page 2, Lines 12 & 13 to incorporate that the Clerk of District Court shall issue the Summons containing the temporary restraining order.

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

WITNESS.F11

DATE 1-9-97

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 32, 33
SB 36

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Mary "Marty" Phippen	Montana Association of Clerks of District Court	32		
P/MARS Scott	STATE BAR-MONTANA DOMESTIC RELATIONS STUDY COMMISSION	~~32~~ 33L ~~32~~ 32L		
M. Wellbank	CSED/DPHHS	33	Neutral	
Greg Petesch	Code Commissioner	36		
Jacqueline Lenmark	MT. Bus. Assn	36		Sec. 178
Katie Cholewa	MT Womens Lobby	32 33	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on January 17, 1997, at 10:00 a.m., in Room 410, of the State Capitol, Helena, Montana.

ROLL CALL

Members Present:
Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 142, SB 143, SB 145 posted January 9, 1997

Executive Action: SB 32 SB 44, SB 46, SB 142, SB 145

HEARING ON SB 142

Sponsor: SENATOR REINY JABS, SD 3, Hardin.

Proponents: None

Opponents: None

Opening Statement by Sponsor: SENATOR REINY JABS, SD 3, Hardin.
SB 142 clarifies the process when a defendant appeals revocation

Discussion: **SENATOR HALLIGAN.** This is a middle-ground approach.

{Tape: 2; Side: A; Approx. Time Count: #18.5; Comments: None.}

VICE CHAIRMAN GROSFIELD. I am referring to page 3, line 8, following "time period" and on page 6, line 26, following "time period". Another bill says "30-day period", but that may not pass. I don't want to give juvenile probation officers unlimited time of jurisdiction. **SENATOR HALLIGAN.** I believe 30 days is much too short - 180 days would be more appropriate.

CHAIRMAN CRIPPEN. Do they have the authority to take a drivers' license again and again, as necessary?

{Tape: 2; Side: A; Approx. Time Count: 20.5; Comments: None.}

VICE CHAIRMAN GROSFIELD. Would it mean 30 days per confiscation? **SENATOR HALLIGAN.** We need to have a hammer, and the longer the better.

Valencia Lane. I could suggest a new sentence the end of line 11 on page 3 to state "a youth's drivers license may be confiscated more than once, and may be returned at the discretion of the officer".

Motion/Vote: **SENATOR HALLIGAN MADE A MOTION TO ADOPT THE AMENDMENTS sb0040601.av1. THE MOTION CARRIED UNANIMOUSLY.**

Motion/Vote: **SENATOR ESTRADA MADE A MOTION THAT SB 46 DO PASS AS AMENDED. THE MOTION CARRIED UNANIMOUSLY.**

{Tape: 2; Side: A; Approx. Time Count: #24; Comments: None.}

EXECUTIVE ACTION ON SB 32

Discussion: **SENATOR HALLIGAN.** I am concerned with language on page 2, lines 12-13, "any summons...restraining order", pertaining to administrative duty. **Valencia Lane** explained that the Committee could strike "in addressing...procedure necessary", and insert "either when or if the Clerk of the District Court issues a". On page 2, line 13, the Committee could strike "issued", following "chapter, and strike "must contain" and insert "the clerk shall issue and include with the summons".

{Tape: 2; Side: A; Approx. Time Count: #28.0; Comments: None.}

SENATOR HOLDEN. What if a couple were in the midst of a divorce and had to sell their cattle? Where would the sale dollars go? **SENATOR HALLIGAN.** There is nothing to prevent transfer of property at this time.

SENATOR GROSFIELD. In situation where the couple is not speaking and needs to make a disposition, what happens? **SENATOR HALLIGAN.**

They must do a separate motion in court to stop, stay, vacate what they've already done. This adds to delay and greater costs in attorney fees.

SENATOR ESTRADA. I like the bill, and believe it would make people talk to each other.

Vote: SENATOR HALLIGAN'S MOTION TO ADOPT THE AMENDMENTS TO SB 32 CARRIED UNANIMOUSLY.

(EXHIBITS #9, #10) SENATOR HALLIGAN. Attorneys cannot charge a lump sum fee in family law. They're required to charge hourly fees.

Motion/Vote: SENATOR HALLIGAN MADE A MOTION THAT SB 32 DO PASS AS AMENDED. This motion includes the change in his amendments on page 2, line 20. THE MOTION CARRIED UNANIMOUSLY.

{Tape: 2; Side: B; Approx. Time Count: #00, 12:07 p.m. ; Comments: None.}

EXECUTIVE ACTION ON SB 145

Amendments: Department of Justice amendments **(EXHIBIT #11)**

Discussion: John Connor, Department of Justice. I believe this is the most complicated are of criminal law, because of the two courts with separate, overlapping jurisdictions. In Sword, the Court said it's confusing.

By striking all of this language, it could allow someone, although probably rare, to be charged with both a misdemeanor and felony in separate courts. For example, felony theft could be charged as a misdemeanor in order to make $600 restitution. Separate and overlapping concurrent jurisdiction seems to be the same thing.

I believe this amendment would clarify this situation for the court, and give the legislative intent on page 1, lines 16-17. We don't want to prosecute someone for the same problem twice.

Motion/Vote: SENATOR BISHOP MADE A MOTION THAT THE AMENDMENTS PROPOSED BY JOHN CONNOR BE ADOPTED. THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SENATOR BISHOP MADE A MOTION THAT SB 145 DO PASS AS AMENDED. THE MOTION CARRIED UNANIMOUSLY.

SENATE STANDING COMMITTEE REPORT

January 20, 1997

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration SB 32 (first reading copy -- white), respectfully report that SB 32 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 2, line 12.
Strike: "In addition to the contents required by the Montana Rules of Civil Procedure, any"
Insert: "When the clerk of the district court issues a"

2. Page 2, line 13.
Strike: "issued"
Following: "chapter"
Strike: "must contain"
Insert: ", the clerk shall issue and include with the summons"

3. Page 2, line 19.
Following: "restraining"
Insert: "order"

4. Page 2, line 20.
Strike: the first "order"

-END-

Amd. Coord.
Sec. of Senate

131202SC.SRF

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 1-17-97

NAME	PRESENT	ABSENT	EXCUSED
SUE BARTLETT	✓		
AL BISHOP	✓		
STEVE DOHERTY	✓		✓
SHARON ESTRADA	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
WALT MC NUTT	✓		
LORENTS GROSFIELD, VICE CHAIRMAN	✓		
BRUCE CRIPPEN, CHAIRMAN	✓		

SEN:1995
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Ex 1-17-97

Amendments to Senate Bill No. 32
First Reading Copy

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. #9
DATE 1-17-97
BILL NO. SB 32

Requested by Senator Halligan
For the Committee on Judiciary

Prepared by Greg Petesch
January 8, 1997

1. Page 2, lines 19 and 20.
Following: "restraining" on line 19
Strike: remainder of line 19 through "not" on line 20
Following: "order"
Insert: "may not"

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SENATE JUDICIARY COMMITTEE
EXHIBIT NO. #10
DATE 1-17-97
BILL NO. SB 32

Amendments to Senate Bill No. 32
First Reading Copy

For the Committee on Judiciary

Prepared by Valencia Lane
January 18, 1997

1. Page 2, line 12.
Strike: "In addition to the contents required by the Montana Rules of Civil Procedure, any"
Insert: "When the clerk of the district court issues a"

2. Page 2, line 13.
Strike: "issued"
Following: "chapter"
Strike: "must contain"
Insert: ", the clerk shall issue and include with the summons"

3. Page 2, line 19.
Following: "restraining"
Insert: "order"

4. Page 2, line 20.
Strike: the first "order"

HOUSE JUDICIARY

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
SB0031	JENKINS, LOREN	PROVIDE FOR CHEMICAL TREATMENT OF CERTAIN SEX OFFENDERS				
	2/01	3/06		CONCUR 03/11 VOTE: 15-0		3/11
SB0032	HALLIGAN, MIKE	TEMPORARY PROPERTY RESTRAINING ORDER IN DIVORCE PROCEEDINGS				
	1/25	3/06		CONCUR 03/06 VOTE: 14-3		3/07
SB0033	HALLIGAN, MIKE	TEMPORARY FAMILY SUPPORT ORDER IN DIVORCE PROCEEDINGS				
	1/20	3/06		CONCUR 03/06 VOTE: 14-3		3/07
SB0036	LYNCH, J. D.	CODE COMMISSIONER BILL				
	1/18	2/04		CONCUR 02/04 VOTE: 15-0		2/06
SB0044	HOLDEN, RIC	LIMIT MOTOR VEHICLE LIABILITY INSURER'S LIABILITY UNDER THE POLICY				
	1/24	3/05	03/06/97 Tabled 14-1	CONCUR AS AMENDED 03/14 VOTE: 16-4		3/14
SB0046	SPRAGUE, MIKE	CONFISCATION OF DRIVER'S LICENSE OF YOUTH WHO'S DELINQUENT/NEEDS SUPERVISION				
	1/25	3/07		CONCUR AS AMENDED 03/07 VOTE: 20-0		3/08
SB0054	SHEA, DEBBIE	REVISE VICTIMS' COMPENSATION LAWS				
	1/21	3/05		CONCUR AS AMENDED 03/06 VOTE: 16-0		3/07
SB0079	CHRISTIAENS, CHRIS	STATE AUDITOR REGULATION OF THE SALE OF LIVING TRUSTS				
	2/04	3/05		CONCUR AS AMENDED 03/10 VOTE: 14-3		3/11
SB0092	ECK, DOROTHY	REVISE COMPOSITION & DUTIES OF INTERAGENCY COORDINATING COUNCIL				
	1/25	3/07		CONCUR 03/07 VOTE: 16-4		3/08
SB0103	VAN VALKENBURG, FRED	PROVIDE FOR IMMUNITY OF NATIONAL GUARD ENGAGED IN FEDERAL ACTIVITIES				
	1/20	2/06		CONCUR 02/06 VOTE: 18-1		2/07
SB0106	VAN VALKENBURG, FRED	GENERALLY REVISE DUI ALCOHOL AND DRUG TEST LAWS				
	1/25			VOTE:	2/14/97	
SB0110	BECK, TOM	DPHHS AUTHORITY TO ESTABLISH PARENTAL CONTRIBUTIONS TOWARDS YOUTH'S CARE				
	1/28	3/07		TABLED ON 03/07 VOTE: 12-7		

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on March 6, 1997, at 8 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted:	SB 16, SB 32, SB 33, SB 31 POSTED 2/21/97
Executive Action:	BE CONCURRED IN: SB 16, SB 32, SB 33 BE CONCURRED IN AS AMENDED: SB 54, SB 212 TABLED: SB 44

HEARING ON SB 16

Opening Statement by Sponsor: SEN. MIKE HALLIGAN
{Tape: 1; Side: A; Approx. Time Count: 2.0}

Proponents' Testimony:

MARS SCOTT, Attorney
{Tape: 1; Side: A; Approx. Time Count: 5.3}

CORBIN HOWARD, Attorney
{Tape: 1; Side: A; Approx. Time Count: 10.0}

Closing by Sponsor: SEN. HALLIGAN
{Tape: 1; Side: A; Approx. Time Count: 12.1}

HEARING ON SB 32

Opening Statement by Sponsor: SEN. MIKE HALLIGAN
{Tape: 1; Side: A; Approx. Time Count: 12.7}

Proponents' Testimony:

MARS SCOTT, Attorney
{Tape: 1; Side: A; Approx. Time Count: 15.1}

KERRY NEWCOMER, Attorney
{Tape: 1; Side: A; Approx. Time Count: 16.9}

Questions From Committee Members and Responses:
{Tape: 1; Side: A; Approx. Time Count: 19.7 - 27.7}

Closing by Sponsor: SEN. HALLIGAN
{Tape: 1; Side: A; Approx. Time Count: 27.8}

HEARING ON SB 33

Opening Statement by Sponsor: SEN. MIKE HALLIGAN
{Tape: 1; Side: A; Approx. Time Count: 28.5}

Proponents' Testimony:

CORBIN HOWARD, Attorney
{Tape: 1; Side: A; Approx. Time Count: 31.4}

MARS SCOTT, Attorney
{Tape: 1; Side: A; Approx. Time Count: 33.5}

Closing by Sponsor: SEN. HALLIGAN
{Tape: 1; Side: A; Approx. Time Count: 36.0}

EXECUTIVE ACTION ON SB 33

Motion: REP. WYATT moved SB 33 BE CONCURRED IN.
{Tape: 1; Side: A; Approx. Time Count: 38.0}

Discussion:
{Tape: 1; Side: A; Approx. Time Count: 38.2-Tape 1; Side B; 8.0}

Vote: The motion carried 14 - 3; REPS. BOHARSKI, MC GEE and CLARK voting no. (REP. AHNER voted aye by proxy; REP. MC GEE voted no by proxy. REPS. SMITH, MOLNAR and KOTTEL were not present for the vote and left no proxy votes.) **REP. ELLINGSON will carry SB 33.**

EXECUTIVE ACTION ON SB 16

Motion/Vote: **REP. ANDERSON moved SB 16 BE CONCURRED IN.** The motion carried 14 - 3; REPS. BOHARSKI, MC GEE and CLARK voting no. (REP. AHNER voted aye by proxy; REP. MC GEE voted no by proxy. REPS. SMITH, MOLNAR and KOTTEL were not present for the vote and left no proxy votes.) **REP. ELLINGSON will carry SB 16.**

EXECUTIVE ACTION ON SB 32

Motion: **REP. WYATT moved SB 32 BE CONCURRED IN.**
{Tape: 1; Side: B; Approx. Time Count: 13.6}

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 14.0}

Vote: The motion carried 14 - 3; REPS. BOHARSKI, MC GEE and CLARK voting no. (REP. AHNER voted aye by proxy; REP. MC GEE voted no by proxy. REPS. SMITH, MOLNAR and KOTTEL were not present for the vote and left no proxy votes.) **REP. ELLINGSON will carry SB 32.**

EXECUTIVE ACTION ON SB 54

Motion: **REP. WYATT moved SB 54 BE CONCURRED IN.**
{Tape: 1; Side: B; Approx. Time Count: 19.0}

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 20.5 - 24.6}

Motion/Vote: **REP. BOHARSKI moved to amend by striking subsection 3 and inserting corresponding language from HB 540.** The motion carried 16 - 0. (REPS. AHNER, MC GEE, KOTTEL and MOLNAR were not present for the vote and left no proxy votes.)

Motion/Vote: **REP. HANSON moved SB 54 BE CONCURRED IN AS AMENDED.** The motion carried 16 - 0. (REPS. AHNER, MC GEE, KOTTEL and MOLNAR were not present for the vote and left no proxy votes.) **REP. MC CULLOCH will carry SB 54.**

EXECUTIVE ACTION ON SB 79

Motion: **REP. SANDS moved SB 79 BE CONCURRED IN.**
{Tape: 1; Side: B; Approx. Time Count: 28.2}

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 28.8-31.5; Comments: REP. SANDS withdrew the motion pending further information.}

HOUSE STANDING COMMITTEE REPORT

March 6, 1997

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 32** (third reading copy -- blue) **be concurred in**.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Ellingson

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Committee Vote:
Yes 14, No 3.

491349SC.Hgd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 3/6/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER	✓		
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI	✓		
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON	✓		
REP. DUANE GRIMES	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		✓ 9:15
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR	✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH 9:10	✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓ 1:30		✓

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

HOUSE JUDICIARY COMMITTEE

DATE 3/6/97

BILL NO. SB 32 SPONSOR(S) Sen. Halligan

PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)
(PLEASE IDENTIFY TYPE OF VISITOR)

PLEASE PRINT

TYPE	NAME	ADDRESS	REPRESENTING
P	KERRY N. NEWCOMER	MSLA	SELF
P	MARS SCOTT	MSLA	SELF
P	ROBERT TAMELLER	MISSOULA	SELF
P	Kyle Cunningham	Missoula	Self
P	Corbin Howard	Billings	self
P	Keto Chalena	Helena	MT Women's Lobby

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

SENATE BILL NO. 32

INTRODUCED BY HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A PARTY, AS A PART OF A MOTION FOR TEMPORARY MAINTENANCE OR SUPPORT OR BY INDEPENDENT MOTION, TO REQUEST A TEMPORARY RESTRAINING ORDER PROVIDING THAT INSURANCE COVERAGE NOT BE MODIFIED; REQUIRING THAT A SUMMONS ISSUED IN A MARRIAGE DISSOLUTION, MAINTENANCE, CHILD CUSTODY, CHILD SUPPORT, OR FAMILY LAW MEDIATION ACTION CONTAIN A TEMPORARY RESTRAINING ORDER PREVENTING A PARTY FROM DISPOSING OF MARITAL PROPERTY WITHOUT A COURT ORDER OR THE CONSENT OF THE OTHER PARTY, EXCEPT IN THE USUAL COURSE OF BUSINESS, FOR NECESSITIES OF LIFE, OR FOR THE PAYMENT OF ATTORNEY FEES; SETTING OUT THE TERMS OF THE TEMPORARY RESTRAINING ORDER; AND AMENDING SECTION 40-4-121, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-4-121, MCA, is amended to read:

"**40-4-121. Temporary order <u>for maintenance or support,</u> ~~or~~ temporary injunction<u>, or temporary restraining order</u>.** (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion must be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining ~~any~~ <u>a</u> person from transferring, encumbering, concealing, or otherwise disposing of any property, except in the usual course of business or for the necessities of life, and, if so restrained, requiring the person to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) <u>restraining both parties from cashing, borrowing against, canceling, transferring, disposing of,</u>

or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability coverage held for the benefit of a party or a child of a party for whom support may be ordered;

(c) enjoining a party from molesting or disturbing the peace of the other party or of any family member or from stalking, as defined in 45-5-220;

~~(c)~~(d) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

~~(d)~~(e) enjoining a party from removing a child from the jurisdiction of the court;

~~(e)~~(f) ordering a party to complete counseling, including alcohol or chemical dependency counseling or treatment;

~~(f)~~(g) providing other injunctive relief proper in the circumstances; and

~~(g)~~(h) providing additional relief available under Title 40, chapter 15.

(3) ~~In addition to the contents required by the Montana Rules of Civil Procedure, any~~ WHEN THE CLERK OF THE DISTRICT COURT ISSUES A summons ~~issued~~ pursuant to this chapter ~~must contain~~, THE CLERK SHALL ISSUE AND INCLUDE WITH THE SUMMONS a temporary restraining order:

(a) restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether jointly or separately held, without either the consent of the other party or an order of the court, except in the usual course of business or for the necessities of life. The restraining order must require each party to notify the other party of any proposed extraordinary expenditures at least 5 business days before incurring the expenditures and to account to the court for all extraordinary expenditures made after service of the summons. However, the restraining ORDER may not ~~order~~ preclude either party from using any property to pay reasonable attorney fees in order to retain counsel in the proceeding.

(b) restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability coverage held for the benefit of a party or a child of a party for whom support may be ordered. However, nothing in this subsection (3) adversely affects the rights, title, or interest of a purchaser, encumbrancer, or lessee for value if the purchaser, encumbrancer, or lessee does not have actual knowledge of the restraining order.

(4) A person may seek the relief provided for in subsection (2) without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition requesting relief under Title

27, chapter 19, part 3. Any temporary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, as appropriate.

~~(4)~~(5) The court may issue a temporary restraining order for a period not to exceed 20 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if ~~no~~ an order is not issued until the time for responding has elapsed.

~~(5)~~(6) A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

~~(6)~~(7) At the time of the hearing, the court shall determine whether good cause exists for the injunction to continue for 1 year.

~~(7)~~(8) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

~~(8)~~(9) A temporary order or injunction, entered pursuant to Title 40, chapter 15, or this section:

(a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208;

(b) terminates upon order of the court or when the petition is voluntarily dismissed; and

(c) when issued under this section, must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-220 or 45-5-626."

~~(9)~~(10) When the petitioner has fled the parties' residence, notice of the petitioner's new residence must be withheld except by order of the court for good cause shown."

-END-